

EXHIBIT 2

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARK LONG, COLIN FORAN, NAOMI LACKAFF, :
AARON NONIS, DON NORBURY, and MARK :
YEEND, on behalf of Neon Machine, :
Inc., :

Plaintiffs, :

v :

CORT JAVARONE, SCOTT HONOUR, :
and STEVE HOROWITZ, :

Defendants, :

and :

NEON MACHINE, INC., :

Nominal Defendant. :

C. A. No.
2023-1186-MTZ

- - -

Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Tuesday, January 16, 2024
11:01 a.m.

- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor

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TELEPHONIC ORAL ARGUMENT and GUIDANCE OF THE COURT ON
PLAINTIFFS' MOTION TO EXPEDITE

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
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1 APPEARANCES:

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4 Morris, Nichols, Arsht & Tunnell LLP

5 -and-
6 EDWARD HAN, ESQ.
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9 Paul Hastings LLP
10 for Plaintiffs

11 MARC CASARINO, ESQ.
12 Kennedys CMK LLP
13 -and-
14 ALLAN E. ANDERSON, ESQ.
15 of the California Bar
16 ArentFox Schiff

17 -and-
18 PATRICK FEENEY, ESQ.
19 of the New York Bar
20 ArentFox Schiff
21 for Defendants Cort Javarone, Scott Honour,
22 and Steve Horowitz
23
24

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1 THE COURT: Good morning, Counsel.
2 This is Morgan Zurn.

3 May I have appearances, please,
4 beginning with counsel for the plaintiff.

5 ATTORNEY COEN: Good morning,
6 Your Honor. This is Kevin Coen from Morris Nichols.
7 With me today on the line, I have Ben Smith from my
8 office. And then from Paul Hastings, we have
9 Edward Han and Timothy Reynolds. With Your Honor's
10 permission, Mr. Han will be speaking today on behalf
11 of the plaintiffs.

12 THE COURT: Thank you. Good morning.
13 And counsel for the defendants.

14 ATTORNEY CASARINO: Good morning,
15 Your Honor. Marc Casarino of Kennedys on behalf of
16 the defendants. Also on the phone is my co-counsel
17 from the ArentFox law firm, Allan Anderson. And I
18 believe Patrick Feeney from his firm is also going to
19 join, but I did not hear him yet.

20 In any event, both have been admitted
21 *pro hac vice*. And, Your Honor, while I will present
22 most of our arguments today, with the Court's
23 indulgence, I request that Mr. Anderson be permitted
24 to speak on a final issue at the conclusion of my

1 remarks.

2 THE COURT: Thank you.

3 Just as a heads-up, if I could ask
4 you-all for the grace we gave each other during the
5 pandemic. It's a snow day here, and there are a lot
6 of small, wet kids having hot chocolate in my house.
7 If something goes wrong, that's why. But I am
8 prepared, I did read all your papers, and we'll do our
9 best.

10 Mr. Han.

11 ATTORNEY HAN: Thank you. And good
12 morning, Your Honor. And good luck dealing with all
13 the children in your house and the hot chocolate being
14 served.

15 As the Court knows, expedited
16 proceedings should be ordered where the moving party,
17 one, presents a colorable claim and, two, demonstrates
18 a possibility of threatened irreparable injury. As
19 Delaware precedent has held, the showing necessary for
20 this Court to grant our motion to expedite is not
21 high. We believe we've exceeded that threshold here.

22 In fact, if you look at the papers,
23 defendants do not challenge the first prong of this
24 expedition analysis, and the opposition really only

1 focuses on the irreparable injury prong.

2 Now, as to that first prong, the
3 colorable claim prong, again, even though defendants
4 do not challenge that, they do raise a factual dispute
5 as to whether, quote/unquote, network launch has
6 occurred.

7 Now, initially, Your Honor, that's
8 irrelevant to the analysis for this motion since it's
9 simply a defense and not a bar defining that
10 plaintiffs have presented a colorable claim. But even
11 setting that aside, whether network launch has
12 occurred is really not even a genuine dispute here, in
13 our opinion, Your Honor.

14 As we've presented in our papers,
15 network launch is defined in the SAFEs as a:
16 "bona fide transaction or series of transactions
17 pursuant to which the Token Issuer issues [a] native
18 Token associated with access to and use of the
19 Network."

20 So network launch occurred here,
21 Your Honor, when the SHRAP token, which is the native
22 token associated with access to and use of any
23 network, was issued.

24 THE COURT REPORTER: Counsel, this is

1 Doug, the court reporter. If you would slow down,
2 please. Thank you.

3 ATTORNEY HAN: So network launch
4 occurred here where the SHRAP token, which is a native
5 token associated with access to and use of the Neon
6 network, was issued. And that occurred at the latest
7 in April 2023.

8 I wish to further point out that
9 network launch is an easily verifiable event,
10 Your Honor, because of the very public and transparent
11 nature of the blockchain.

12 Now, defendants' argument that network
13 launch has not occurred -- and they've made that
14 argument both in their opposition brief, as well as in
15 denials and their answer -- is completely
16 disingenuous, Your Honor, and really just shows that
17 the defendants are speaking out of both sides of their
18 mouths.

19 On the one side, defendants are
20 claiming network launch has not occurred. But then on
21 the other, as we demonstrated in our reply papers,
22 Mr. Javarone has explicitly demanded tokens that would
23 not exist but for the network launch having occurred.

24 And he's demanding those tokens under

1 agreement that contains virtually -- a virtually
2 identical definition of "network launch" as the SAFEs
3 do.

4 So, again, not only do we believe a
5 colorable claim exists here, but that any dispute as
6 to whether network launch occurred is really
7 disingenuous.

8 Now, as to the second prong, the
9 threatened irreparable injury prong, defendants focus
10 their arguments two ways, basically. One, they claim
11 that there was -- plaintiffs delayed in seeking
12 relief; and two, they claim that any suffered harm --
13 any harm suffered by the plaintiffs is speculative and
14 that certainly relief is supposedly prohibited by a
15 stay entered in the bankruptcy proceedings at
16 Mr. Javarone's affiliated entity, The 4D Factory.
17 Now, we disagree.

18 First, as we detailed in our reply
19 papers, Your Honor, there was no delay in bringing
20 this action or filing the motion to expedite. The
21 June 29, 2023, day that the defendants point to is
22 simply the sixty-first day after the network launch
23 occurred, which occurred at the latest on April 29,
24 2023. And that's the date when the SAFEs

1 automatically converted to preferred stock.

2 Now, there was no reason for the
3 plaintiffs to file a claim then because defendants did
4 not first dispute whether network launch occurred
5 until much later, at an October 5, 2023, board
6 meeting.

7 Now, after the defendants made their
8 first dispute as to whether network launch occurred,
9 Mr. Long, one of the plaintiffs here, attempted to
10 resolve this matter. And he had discussions and
11 communications with the defendants and provided them
12 information.

13 However, when it was clear that they
14 were going to continue to entrench themselves as
15 directors and those attempts to try to informally
16 resolve this matter failed, plaintiffs then
17 immediately filed a complaint and the motion to
18 expedite. So we just don't believe there was any
19 undue delay here, Your Honor.

20 We also don't believe that the
21 threatened harm is speculative. In fact, Neon is
22 currently suffering, as there is uncertainty regarding
23 who controls Neon and directs the factions. I'm not
24 sure if a better analogy right now is that Neon is a

1 rudder on the ship or has two rudders facing opposing
2 directions.

3 But, frankly, the way defendants have
4 set this up has made it very difficult for Neon to
5 either continue its fundraising opportunities and/or
6 to, frankly, conduct its normal operations in the
7 normal course.

8 In fact, all of the employees of Neon
9 who are not the plaintiffs here sent a letter to the
10 board of directors in late December, I believe, asking
11 for clarity as to who's running the company and,
12 frankly, demanding that Mr. Long be reinstated as CEO
13 and stating that they will resign if this isn't -- if
14 this issue isn't resolved quickly.

15 So, again, these actions by defendants
16 are absolutely harming the company right now and
17 they're absolutely continuing to harm the company
18 while the defendants continue these actions.

19 Now, defendants do make an argument
20 that the complaint assumes certain actions on behalf
21 of nonparties Polychain and Griffin. That argument,
22 frankly, Your Honor, is inaccurate.

23 In the complaint and in our reply
24 papers, we detail that both investors have a

1 ready-to-manage conversion of their SAFEs and that
2 both Polychain and Griffin believe that the SAFEs have
3 converted and they intend to exercise their rights
4 afforded to stockholders, including their ability to
5 elect members to the company's board. So that
6 argument, frankly, Your Honor, is frank -- is
7 incorrect.

8 Finally, Your Honor, as to the
9 bankruptcy court's order, we do not believe that
10 prohibits adjudication by this Court of the relief
11 that we seek. If the stay were as broad as the
12 defendants are trying to claim, then the bankruptcy
13 court could have simply stayed this entire action.

14 Instead, the bankruptcy court order
15 only states that "any use of the stock to elect new
16 directors and/or to cause the appointment of a new
17 CEO" are subject to the stay and would require further
18 application back to the bankruptcy court.

19 The bankruptcy court even stated at
20 the hearing on that motion to stay, Your Honor, that
21 he found it hard to believe that if the plaintiffs won
22 the case in Delaware that the bankruptcy court would
23 nevertheless still say that they're not supposed to
24 issue the securities. And that makes practical sense,

1 Your Honor, because the bankruptcy court rightfully
2 defers to this court to resolve the corporate issues
3 under Delaware law involving Neon, which is not in
4 bankruptcy.

5 And lastly, Your Honor, I would like
6 to flag that defendants should also want proper
7 resolution of the issues raised in this action. If
8 they're right in their position -- which, again, I
9 don't think they are -- then they should want finality
10 right away as to who is or is not a stockholder and
11 who is or is not legitimately on the board so that
12 Neon can then move forward and operate.

13 Frankly, Your Honor, defendants are
14 afraid of that because they understand what'll happen
15 once the SAFEs do convert and Polychain and Griffin
16 then are exercising the rights as stockholders. So
17 they're trying to prolong this matter as long as
18 possible to stay entrenched for as long as possible to
19 take advantage of the company for as long as possible.

20 So plaintiffs request an expedited
21 proceeding with a trial set for hopefully March,
22 Your Honor. And we don't believe the issues in this
23 matter are complicated or complex at all. We believe
24 they're very straightforward. And this trial should

1 not take more than two days.

2 Thank you, Your Honor. Unless the
3 Court has any questions ...

4 THE COURT: Thank you.

5 I just wanted to explore a little bit
6 and make sure that I understood -- I just wanted to
7 float my understanding of the bankruptcy court's order
8 by you and also ask for your thoughts. I think I want
9 to reach out to the bankruptcy judge and make sure
10 that I don't run sideways of what he's trying to
11 accomplish before I do anything. I think that's the
12 fair and right thing to do, so I wanted to get your
13 thoughts on that.

14 But my understanding of what he
15 accomplished on the stay motion, I read it to say that
16 he declined to actually stay any adjudication in this
17 action. But what he did accomplish was essentially a
18 stipulation by the parties in front of him that they
19 would not exercise their stock to effectuate any
20 change in control, which makes sense to me through the
21 lens of thinking through the estate in front of him as
22 he kind of probed that the estate in front of him is
23 4D, and some of the value there is control over Neon.

24 Do I have that roughly right by your

1 perspective?

2 ATTORNEY HAN: I believe so,
3 Your Honor. I believe that's entirely correct. I
4 think the Court did not stay this action. And the
5 bankruptcy court stated that because the parties who
6 were present at the hearing agreed that that part of
7 the action, that the shareholder and stockholder vote
8 would go back to him for analysis before moving
9 forward.

10 THE COURT: And who exactly are the
11 parties to that agreement?

12 ATTORNEY HAN: Your Honor, I believe
13 the plaintiffs and 4D's counsel were present at that
14 hearing. I'm not sure if ArentFox was also there as
15 counsel for the defendants.

16 THE COURT: So when you say
17 "plaintiffs," you mean you-all?

18 ATTORNEY HAN: Yes, ma'am.

19 THE COURT: So you-all have agreed
20 with 4D not to take any action towards any change in
21 control based on however the SAFEs and conversion to
22 preferred and any subsequent conversion to common
23 might shake out.

24 Do I have that right?

1 ATTORNEY HAN: I believe we've agreed,
2 the plaintiffs have agreed with 4D that they would go
3 back to the bankruptcy court before any stock is
4 exercised to elect new directors or cause the
5 appointment of a new CEO.

6 THE COURT: How is that consistent
7 with asking me to reinstate an ousted CEO?

8 ATTORNEY HAN: Well, Your Honor, I was
9 thinking that because of the bankruptcy court order
10 and stipulation, what we could do is do this in
11 phases, if the Court's so inclined. We could,
12 frankly, streamline this action tremendously by doing
13 that as well.

14 The main issue, the threshold issue
15 here, as the defendants, frankly, acknowledge and
16 concede is whether network launch occurred, and that
17 is front and center in front of the bankruptcy court
18 as well, and the bankruptcy court acknowledged that
19 that's the main issue and that should go forward. And
20 we could do that very quickly, frankly, Your Honor,
21 probably in cross-briefs filed within a week or two,
22 because we believe it's all publicly available
23 information.

24 Now, once that's decided, then we

1 could go back to the bankruptcy court and let the
2 bankruptcy court know what's going on, and then this
3 court can continue with the expedited proceedings for
4 the remainder of the issues.

5 THE COURT: Okay. That was the order
6 of operations that I had come up with that might not
7 offend what the bankruptcy court was trying to
8 accomplish or be inconsistent with what I think
9 you-all agreed to there.

10 And it did seem to me that perhaps the
11 idea of whether a network launch occurred and what the
12 effect of issuing the tokens is under the SAFE
13 agreement is something that could be dealt with on the
14 pleading since the complaint has been answered. And
15 obviously I'll hear from the defendants on this.

16 But I am comforted to hear that it
17 sounds like you think the best way to go forward is to
18 table any subsequent effects on leadership of the
19 company or management of the company based on that
20 conclusion until we check in with the bankruptcy
21 court.

22 Do I have that right?

23 ATTORNEY HAN: Absolutely, Your Honor.

24 THE COURT: Okay. To me, that also

1 then colors the expedition argument, because what I
2 understand to be the driving force of your expedition
3 argument is this idea that the leadership of the
4 company is up in the air.

5 But if you-all have essentially agreed
6 with the 4D folks and in front of the bankruptcy court
7 that I'm not going to make any decisions on the
8 leadership of the company until we check in with the
9 bankruptcy court, doesn't that take the air out of
10 your balloon on imminent irreparable harm?

11 ATTORNEY HAN: Not at all, Your Honor.
12 I think going back to the bankruptcy court would be,
13 frankly, a very quick and easy thing to do. We would
14 simply request that a hearing and/or, frankly, submit
15 some information to the bankruptcy court of this
16 Court's adjudication of the network launch issue and
17 state that we wish to move forward in Delaware to
18 conclude the action as to the other allegations that
19 were raised in the complaint, and based on the order
20 of this court that those proceedings would be
21 concluded by X date because they've been expedited.
22 We believe the bankruptcy court would be receptive to
23 that.

24 THE COURT: It also seems strange to

1 me that -- and this is zooming out to a different
2 topic -- it seems very strange to me to be
3 adjudicating SAFE rights of minority investors who
4 aren't here.

5 ATTORNEY HAN: So, Your Honor, I think
6 it's not so much adjudicating rights of minority
7 investors who aren't here as opposed to adjudicating
8 the harms being caused to Neon, which is the
9 counterparty to the SAFEs.

10 This is a derivative action brought to
11 address the harms to Neon, and it's brought by the
12 only current stockholders who are not affiliated with
13 the defendants. So, again, it goes back to the
14 irreparable harm, to the argument that I made earlier,
15 and that Polychain and Griffin arguably have no
16 standing to bring these types of derivative claims
17 since they're SAFE holders and not stockholders to the
18 action, the defendants.

19 So we don't think you're adjudicating
20 the rights of Polychain and Griffin at all. You're
21 adjudicating whether the language in the SAFEs say
22 what it does and that the defendants are -- frankly,
23 are improperly entrenching themselves, should be the
24 second part of the analysis on the expedition.

1 THE COURT: But that first part, and
2 the only part where it sounds like we are more
3 comfortable proceeding, is in what I understand to be
4 a reading of the SAFE agreement and concluding whether
5 those rights converted. And Griffin and Polychain
6 aren't here.

7 Seems to me under *Germaninvestments*,
8 Vice Chancellor Slight, when you're talking about
9 interpreting the terms of the contract, you've got to
10 have the parties to that contract before the Court.

11 ATTORNEY HAN: Your Honor, I believe
12 Polychain and Griffin, as we've alleged and set forth
13 in our papers, are both supportive of this position
14 and, frankly, in their own rights during the board
15 meeting in October, as well as the recent board
16 meetings, have demanded that the board and the company
17 recognize the SAFEs have converted.

18 I imagine Polychain and Griffin will
19 do what they do once this Court has made a decision on
20 the network launch issue and whether the SAFEs have
21 converted because that's an agreement by Neon.

22 But, again, based on what our clients
23 know and what occurred at board meetings, both
24 Polychain and Griffin are eager to and believe the

1 SAFEs have converted and wanted to help right the Neon
2 ship in terms of corporate governance.

3 So I'm not sure it's the same type of
4 issues that the Court is concerned about in terms of
5 adjudicating rights of nonparties.

6 THE COURT: It's --

7 ATTORNEY ANDERSON: Your Honor, this
8 is Allan Anderson. If I could make a point when it's
9 a good time.

10 THE COURT: Yes, it's not quite a good
11 time yet. But thank you. I'll turn to you in a
12 moment.

13 ATTORNEY ANDERSON: Thank you,
14 Your Honor.

15 THE COURT: Thank you.

16 Mr. Han, I'm thinking about this
17 almost more from a Court of Chancery rule joinder
18 issue, joinder of a necessary party. Would we offend
19 Griffin or Polychain or do something that they don't
20 want, thinking more of a Rule 19 joinder issue.

21 ATTORNEY HAN: I have not thought
22 about it that way, Your Honor. But if that is
23 something that the Court requires -- and I do not
24 think there would be an issue with the plaintiffs

1 enjoining Polychain and Griffin in any expedited
2 action so that then the Court has comfort that there
3 are -- any rights of theirs are then adjudicated while
4 they are present.

5 THE COURT: Thank you.

6 Mr. Anderson.

7 ATTORNEY ANDERSON: Thank you,
8 Your Honor.

9 This last Friday, there was a board
10 meeting; and at the board meeting, the shareholders
11 were involved, and I also understand that Polychain
12 and Griffin were involved with that board meeting.

13 I wanted to tell the Court that it is
14 our intention to bring Polychain and Griffin into this
15 lawsuit. I expect to get that on file within the next
16 one week to ten days, max; and that I think we should
17 not do this expedited motion until we have all the
18 necessary parties in this case.

19 So my argument is, Your Honor, at this
20 particular point in time, the necessary parties are
21 not in this action and therefore, a motion to expedite
22 is premature and it should not be considered until
23 Griffin and Polychain are properly in this case.

24 THE COURT: Thank you for that.

1 Mr. Han, was there anything else
2 before I give the floor to Mr. Anderson? Is there
3 anything else that you wanted to address?

4 ATTORNEY HAN: I don't think so,
5 although I would like to address Mr. Anderson's point
6 really quickly. If they intend to bring Polychain and
7 Griffin into the lawsuit, I don't think that should
8 have any --

9 THE COURT REPORTER: Counsel, you're
10 doing it again. If you would slow down, I would
11 really, really appreciate it.

12 (The court reporter read back from the
13 record as follows:

14 "Attorney Han: I don't think so,
15 although I would like to address Mr. Anderson's point
16 really quickly. If they intend to bring Polychain and
17 Griffin into the lawsuit ..., " and then after that,
18 please.

19 ATTORNEY ANDERSON: This is Allan
20 Anderson. Who's speaking?

21 THE COURT: That is the court
22 reporter. Mr. Anderson, I need you to wait your turn.
23 Thank you.

24 And, Mr. Han, please slow down for the

1 court reporter.

2 ATTORNEY HAN: Absolutely. Thank you,
3 Your Honor. I apologize.

4 If the defendants intend to bring
5 Polychain and Griffin into the lawsuit, that should
6 not impact in any way this motion to expedite. And,
7 frankly, if the defendants believed they had any
8 claims against Polychain and Griffin, they could have
9 and should have raised those when they filed their
10 answer to the complaint. They did not file any
11 counterclaims. They did not file any type of
12 cross-claim. And, again, that matter should have been
13 raised earlier, and I don't think that should impact
14 this motion to expedite.

15 Thank you, Your Honor.

16 THE COURT: Thank you.

17 Is there, Mr. Han, any further
18 development in 4D's bankruptcy that I need to be aware
19 of?

20 ATTORNEY HAN: I believe 4D has filed
21 a bankruptcy plan. I think that happened, I want to
22 say, a couple weeks ago. I do not know of any other
23 developments in the bankruptcy court. I imagine
24 Mr. Anderson could speak to that.

1 THE COURT: All right. We'll do that
2 in a moment.

3 4D having filed for bankruptcy, what
4 is the effect of that on your argument that
5 Mr. Javarone is taking actions to essentially pay off
6 his debt and he's resorted to reorganization, it
7 seems?

8 ATTORNEY HAN: Well, I think there's a
9 difference between 4D and Mr. Javarone, although
10 Mr. Javarone seems to blur the two whenever it suits
11 him. Mr. Javarone is the defendant in this action,
12 not 4D.

13 Mr. Javarone is the one that's
14 claiming tokens, even though he's claiming that
15 network ones didn't occur.

16 Now, as to 4D and its stockholdings, I
17 don't think, frankly, that impacts this case. 4D's
18 holdings are what they are, and that will be
19 determined in bankruptcy court. And any value to
20 those holdings will be determined in bankruptcy court.

21 This action is about Mr. Javarone's
22 and the other defendants' breaches of their fiduciary
23 duties.

24 THE COURT: Thank you.

1 Mr. Anderson, thank you for your
2 patience. It's your turn.

3 ATTORNEY ANDERSON: Sure. I can talk
4 a bit about the bankruptcy situation.

5 4D is the holding company for
6 Mr. Javarone's shares in the company. He is the
7 majority shareholder through 4D.

8 He asked for the 16 million in tokens
9 because the event that occurred in April or June was
10 not a *bona fide* event. If it was a *bona fide* event,
11 the largest shareholder would have been issued tokens
12 and would be selling tokens like the plaintiffs in
13 this case.

14 So what we're looking at in the
15 bankruptcy court is he does have a plan that has been
16 submitted. The bankruptcy court has a right to be
17 able to fund the plan. And what it looks like is that
18 the plaintiffs in this case are preventing the funding
19 of a plan in the bankruptcy court.

20 THE COURT: How so?

21 ATTORNEY ANDERSON: Because they are
22 not issuing the tokens that were directed by the board
23 of directors and have refused to comply with board
24 directives since they began this plan to do what

1 they're doing with the Court.

2 THE COURT: To the extent that your
3 position is that the plaintiffs are preventing the
4 funding of a bankruptcy plan, isn't that more properly
5 an issue for the bankruptcy court than this court?

6 ATTORNEY ANDERSON: Oh, it certain --
7 it certainly is. I was just explaining --

8 THE COURT: Thank you. I appreciate
9 that.

10 Could you address the extent to which
11 you disagree with how I've interpreted what happened
12 in the bankruptcy court and the stipulation and the
13 judge's ruling.

14 ATTORNEY ANDERSON: I think I would
15 defer to my co-counsel, Marc Casarino, who's been
16 dealing with this. But my understanding is that is
17 consistent with -- your understanding is consistent
18 with my understanding of the agreement.

19 And based on your understanding, and
20 given the fact that we do not have necessary parties
21 in this case, I believe, it is my argument that this
22 motion to expedite is premature and inappropriate.

23 And also I would say it is
24 inconsistent for the moving parties to be claiming

1 that they acted expeditiously in this case because it
2 only took them two weeks to file after Mr. Long was
3 put on suspension when, in fact, their complaint,
4 verified complaint, claims that the events took place
5 months earlier, and therefore, as we argued in our
6 opposition, they delayed. And laches is applicable.

7 THE COURT: Thank you.

8 Mr. Casarino.

9 ATTORNEY CASARINO: Yes. Thank you,
10 Your Honor.

11 So I will take them -- some arguments
12 in reverse order since Your Honor picked up on a
13 couple of the points that I think are really
14 dispositive here.

15 One is this bankruptcy and the impact
16 on the plaintiffs' motion to expedite. We -- and to
17 confirm, your understanding, as you stated it today,
18 is also our understanding. I think you have it
19 correct in terms of what the bankruptcy court did and
20 what the current state of play is with respect to
21 that.

22 And so the only issue that we believe
23 that is live right now in this matter is whether there
24 was a network launch. And while I appreciate that the

1 plaintiffs feel very strong about their case, as
2 Your Honor may guess, there is another side to the
3 story that we intend to present. And we believe that
4 there was not a *bona fide* issuance of tokens.

5 Now, plaintiffs' argument is it's
6 plain as day that the tokens were issued, so therefore
7 there was a network launch. They keep just glossing
8 over the qualifier that it had to be a *bona fide*
9 issuance of tokens, and that is a very hotly contested
10 issue that is going to be heavily litigated. It's
11 going to require, we believe, considerable discovery
12 and expert witness analysis. And all those things
13 are -- you know, run contrary to expediting relief
14 here.

15 But, in any event, as Your Honor has
16 identified and I was -- I believe it, I was going to
17 say it myself, that because all the plaintiffs can do
18 here is argue whether there was a network launch.
19 They can't use the -- you know, the shares to vote for
20 new directors or appoint a new CEO without bankruptcy
21 court approval.

22 So this whole theory that they have to
23 hurry up to do this in order to effect change of
24 management is simply incorrect and would, in fact, run

1 afoul of the bankruptcy court automatic stay.

2 And to the extent they argue that
3 there's some question about management and who was in
4 control of Neon, a couple of points on that.

5 One, the DGCL at 141 tells us that a
6 board of directors is in control. And Mr. Anderson
7 may have more flavor on this, but from my perspective,
8 Your Honor, what we're seeing here is a founder and
9 his confederates who just don't want to recognize that
10 a board of directors is in control of Neon and
11 controls its destiny and how it operates, and instead
12 issued a bunch of tokens themselves for pennies and
13 are now self-dealing and selling those on an open
14 market without board approval, is my understanding.
15 And the *bona fides* of that are going to be hotly in
16 dispute here.

17 So we believe that the bankruptcy just
18 completely undermines the request for expedited relief
19 here.

20 But to walk through the other
21 elements, if I may, just to complete my argument on
22 those for the record. This is, we believe, a
23 garden-variety corporate dispute this court routinely
24 handles on a normal litigation schedule.

1 And the plaintiffs are making this
2 request to expedite by creating the appearance of
3 timeliness and exigency where none exist. As set
4 forth in our papers, we think the request to expedite
5 should be denied, and I've already stated one reason
6 why. And there are a couple of others.

7 First, we don't believe the request
8 was made as timely as plaintiffs suggest. Plaintiffs
9 misdirect that they filed a complaint within two weeks
10 of Mr. Long being suspended as CEO.

11 But the grounds to this lawsuit, the
12 issue here is not Mr. Long's suspension as CEO, as
13 we've all agreed. The grounds for this lawsuit, the
14 heart of it is this purported network launch the
15 plaintiffs allege to have occurred in April 2023.

16 And while plaintiffs were plainly on
17 notice that there was no conversion of the SAFE
18 interest as of June 29, 2023, 61 days later, they
19 certainly could have pursued a claim at that time.

20 But they absolutely concede in their
21 papers that they were aware there was not a conversion
22 and that the board was investigating the *bona fides* of
23 the token issuance as of October 5, 2023. Plaintiffs
24 did not file suit until November 27, 2023. That is

1 almost two months, not merely two weeks, after they
2 had absolute knowledge that there is a dispute over
3 the issuance of those tokens.

4 We've cited a number of decisions in
5 our paper, in our brief, that -- motions to expedite
6 in this court have been denied where plaintiffs have
7 waited as long and even not as long to pursue
8 litigation as the plaintiffs have here. For that
9 reason alone, we think the plaintiffs are just too
10 dilatory in seeking relief.

11 Second, the plaintiffs fail to show
12 that there was imminent and irreparable harm
13 warranting the extraordinary relief of expediting this
14 litigation.

15 Initially, plaintiffs said that they
16 needed to expedite this because they wanted to launch
17 the game in December. My understanding is the game
18 did not launch in December, and, in fact, I think it's
19 unclear when the game is going to launch. But I've
20 heard representations that it might be early second
21 quarter 2024.

22 So to the extent plaintiffs suggest
23 that there was this imminent game launch, that's
24 simply not the case.

1 To the extent plaintiffs suggest
2 exigency is required because there is a potential
3 disruption to funding, they've identified no facts to
4 support this speculative risk.

5 On this point, plaintiffs are simply
6 wrong that they can merely recite some speculative,
7 nonfactual predicate to justify expediting this
8 litigation. Again, in footnote 6 of our paper, we
9 cite a number of authorities that provide that the
10 basis for seeking expedited relief must be
11 nonspeculative.

12 And conceptually, this makes sense
13 because expediting litigation is an extraordinary
14 remedy, and it poses a lot of undue burden and harm on
15 the parties and the Court and its staff. And so it's
16 warranted only when there is actual imminent and
17 irreparable harm, not speculative.

18 To the extent, as I've already
19 mentioned, plaintiffs are questioning who was in
20 control, again, no question Section 141 puts the board
21 in control.

22 And, nevertheless, we believe that
23 that dispute is a prototypical corporate dispute
24 routinely addressed by this Court on a normal

1 litigation schedule. It does not justify imposing the
2 burden of expedited litigation.

3 And lastly on this imminent
4 irreparable harm element, as Your Honor pointed out,
5 we think the elephant in the room here is the absence
6 of the SAFE investors. That is very conspicuous.
7 These plaintiffs, who are the ones that issued
8 themselves the tokens that are in dispute, are the
9 ones pushing this to get a fast decision to get rid of
10 the board that's investigating that transaction to
11 themselves -- that's self-dealing, by the way,
12 Your Honor -- in order to bless it so they are in
13 control, they bless what they've done, and then they
14 move on in life.

15 That's curious, but the SAFE investors
16 themselves have made no showing in this court.
17 They've not raised any issue with this court --
18 although those are the ones that are allegedly
19 violated here.

20 And to the extent there was suggestion
21 that it's questionable whether the SAFE investors
22 could pursue a claim, it's their contract, as
23 Your Honor points out. If they believe their
24 contractual rights have been violated, they most

1 certainly could bring a claim for violation of their
2 contract. We don't think so in terms of the
3 *bona fides* of the dispute. But it certainly is a
4 right that they would have to pursue.

5 And for all of those reasons,
6 Your Honor, we believe that the motion to expedite
7 should be denied in this instance.

8 And I will cede to Mr. Anderson if he
9 has any further flavor on some of those points.

10 ATTORNEY ANDERSON: Thank you,
11 Counsel.

12 I definitely -- just to follow up on
13 that, we don't think it's appropriate to do a motion
14 to expedite. We think the parties should be allowed
15 to be in, such as Griffin and Polychain that I will
16 file next week.

17 Also, Your Honor, if you do feel
18 compelled that this is a motion to expedite, we would
19 request that the hearing or the trial for that be
20 moved to June or at the very earliest late May. But
21 we don't think it's appropriate.

22 THE COURT: Thank you.

23 Mr. Han.

24 ATTORNEY HAN: Your Honor, I believe

1 all of the points that both counsel made are points
2 that were addressed in the papers already. I will
3 note that the majority of those points are, frankly,
4 just defenses to the allegations and they're not
5 reasons to deny expedition.

6 To the extent any of their arguments
7 were about expedition solely, they make conflicting
8 claims. They're arguing that the motion was premature
9 and too late, and it just doesn't make sense here,
10 Your Honor.

11 To the extent Polychain and Griffin
12 need to be in this action, they can be brought into
13 this action, and that doesn't need to slow this down
14 at all.

15 And Mr. Anderson can file that
16 complaint, again, this week if he wants. We believe
17 this motion to expedite should be granted, we believe
18 we should proceed as the Court previously indicated
19 and in terms of first deciding the network launch
20 issue, which can be decided very quickly. We don't
21 think it's nearly as difficult of a question as
22 Mr. Casarino presented. We believe it's a very
23 straightforward question. We think that could be
24 decided, go to the bankruptcy court, get the

1 bankruptcy court's approval to move forward, and then
2 come back and decide the rest of the issues.

3 Thank you, Your Honor.

4 THE COURT: Thank you. I wanted to
5 just check in. Do any of you have any opposition to
6 me reaching out to the bankruptcy judge?

7 VARIOUS COUNSEL: No, Your Honor.

8 ATTORNEY HAN: Not from plaintiffs,
9 Your Honor.

10 ATTORNEY ANDERSON: Nor from the
11 defendants, Your Honor. Thank you.

12 THE COURT: Thank you. I do intend to
13 do that before making a final ruling. What I
14 anticipate is that I'll share with you my current
15 thoughts, and you can do with them what you will. But
16 I do want to reach out to the bankruptcy judge; and
17 once I do that, then I will enter an order with
18 modifications really setting in stone what it is that
19 we're going to do.

20 But I'll share with you my thoughts,
21 as I sit here today, without the benefit of having
22 checked in with the bankruptcy court.

23 I don't think that the timing of the
24 underlying events and the plaintiffs' approach to the

1 Court precludes expedition on its own. I understand
2 the real issue to be the board's response to the
3 dispute over whether there was a network launch, and
4 that happened in September. And this action was filed
5 in November, after what looks like some fairly intense
6 back-and-forth between the parties and the board and
7 the changes to the board that have inspired this
8 action and the changes to management. So I don't
9 think there is an argument as to laches precluding
10 expedition.

11 There's no real dispute as to
12 colorable claim. I think the argument for imminent
13 irreparable harm has really been gutted by the
14 stipulation before the bankruptcy court. It seems to
15 me that the real argument, the best argument for
16 imminent irreparable harm, was this sort of classic
17 idea of electoral rights in the balance and management
18 in the balance. But the stipulation between
19 plaintiffs and 4D before the bankruptcy court, as I
20 currently understand it -- and it sounds like the
21 parties think I've come to the correct
22 understanding -- has effectively imposed a *status quo*
23 order on changes to the board and to management.

24 Now, obviously that doesn't extend to

1 Griffin or Polychain. They're not here and they
2 weren't parties to the stipulation. But I understood
3 the bankruptcy court to essentially be putting out
4 there that that judge would be displeased if Griffin
5 or Polychain chose to convert their stock to common
6 and use those common shares to make changes to
7 corporate leadership.

8 So I think the issue of who's in
9 charge and for how long they'll be in charge has
10 effectively been put on ice by the stipulation before
11 the bankruptcy court, which resolves imminent
12 irreparable harm in much the same way that a
13 *status quo* order would in a more classically presented
14 control fight.

15 The other arguments as to imminent
16 irreparable harm that were offered include impediments
17 to fundraising. I haven't seen anything
18 particularized or particularly imminent. And the
19 other argument was an operational one about the launch
20 of the game. I didn't hear any response to that from
21 counsel this morning as to the fact that it didn't
22 happen, and I don't have any other allegations before
23 me as to imminent harm to business operations.

24 I appreciate that counsel have come to

1 their own realization that the only issue that's
2 really fairly litigable in this action at this time is
3 whether there was a network launch. Seems to me
4 that's something that, if the plaintiffs think that
5 can be decided on the papers, they can file a motion.

6 A 30/30/15 briefing schedule will lead
7 us almost to the exact same decision point as a motion
8 to expedite. So I'm not even sure expedition is truly
9 necessary to accomplish what the plaintiffs want to
10 accomplish.

11 What I would ask is that you-all
12 confer and talk about bringing Griffin and Polychain
13 in. I'm very uncomfortable adjudicating their
14 contractual rights without them here, and I might just
15 outright refuse to do it. But you-all can talk about
16 that.

17 In the meantime, I'm going to check in
18 with the bankruptcy court and make sure that I'm not
19 stepping on any toes or running afoul of the stay in
20 that action, even though 4D is not a party here. And
21 you can send me a letter and let me know what you
22 think, and I will share with you my final thoughts
23 once I get in touch with the bankruptcy court and hear
24 what you have to say about bringing in Griffin and

1 Polychain.

2 Is that helpful? Does that make
3 sense?

4 ATTORNEY COEN: Yes, Your Honor.

5 ATTORNEY HAN: Yes.

6 ATTORNEY CASARINO: Yes from the
7 defendants, Your Honor. Thank you.

8 THE COURT: I suppose the motion to
9 expedite is denied, but I will enter an order giving
10 more concrete direction once I touch base with the
11 bankruptcy court and hear from you on the status of
12 bringing in Griffin and Polychain before we adjudicate
13 their contractual rights.

14 Is there anything else I can do for
15 you today?

16 ATTORNEY HAN: No, Your Honor.

17 ATTORNEY CASARINO: No, Your Honor.

18 But I do have a sudden hankering for hot chocolate.

19 THE COURT: It's probably spilled all
20 over my kitchen counter.

21 Take care, everybody, and we'll be in
22 touch.

23 (Proceedings concluded at 11:41 a.m.)

24 - - -

CERTIFICATE

I, DOUGLAS J. ZWEIZIG, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 39 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 17th day of January, 2024.

/s/ Douglas J. Zweizig

Douglas J. Zweizig
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter